

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in light of the present amendments and following discussion, is respectfully requested.

Claims 1, 2, and 6-15 are pending; Claims 2, 7, and 10 are withdrawn from consideration; Claims 3-5 were previously canceled; and Claims 1, 10, and 15 are amended herewith. It is respectfully submitted that no new matter is added by this amendment.

In the outstanding Office Action, Claims 1, 6, 8, 9, and 11-15 were rejected under 35 U.S.C. § 103(a) as unpatentable over Daneshvar (U.S. Pat. No. 5,205,282) in view of Mitra (U.S. Pat. No. 5,890,486).

In the dry winter season, it becomes very easy to catch a cold. Conventionally, masks have been used as a measure to prevent the common cold, by preventing the inhalation of viruses and by keeping the throat warm. One such common mask is a mask made of folded gauze attached to a wearer by rubber ear loops. However, while conventional masks made simply by folding gauze or the like are effective in retaining heat supplied from body temperature or exhalation, such masks have no heating mechanism in and of themselves, and are unable to actively supply warm steam to the nose or throat. As a result, they are unable to moisten the upper respiratory tract.

Conventional masks that incorporate a moisturizing part or a moist part impregnated with water or other substance are not provided with a mechanism that promotes the generation of drug vapors or steam. These vapors in the conventional masks are only promoted by the inhalation action produced by respiration, and it is very difficult to reliably supply moisture or drugs to effectively prevent colds in the upper respiratory tract.

In light of these difficulties, the Applicants developed the present invention. To this end, the Applicants developed the mask, as recited, for example in Claim 1. As recited in Claim 1, a mask includes a heat generating unit incorporated therein, where the heat

generating unit generates heat by chemical reaction using an exothermic composition containing a metal powder, salt, and water, and releases steam in conjunction with the oxidation reaction of the metal powder, thereby generating a therapeutic vapor or inhalation.

Daneshvar is directed to a therapeutic nasal inhaler, in which a therapeutic vapor is generated and delivered *for inhalation* and contact with the nasal passages. Mitra, on the other hand, describes a nasal dilator – a device which mechanically expands the nasal passages by application of an external force – further having a thermal element *which does not generate a vapor for inhalation and contact with the nasal passages*. As previously explained by the Applicants, Daneshvar and Mitra represent examples taken from distinct and non-analogous arts, whose combination would not have been obvious to one of ordinary skill in the art at the time of the invention.

Additionally, as stated in MPEP § 2143.01, “The mere fact that references can be combined or modified does not render the resulting combination obvious unless the prior art also suggests the desirability of the combination.” (emphasis in original). In re Mills, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). Further “Although a prior art device ‘may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so.’” Id. at 682, 16 U.S.P.Q.2d at 1432.

The Office Action attempts to provide motivation to support the applied combination by saying that it would have been obvious to combine Daneshvar with Mitra “to provide for nasal therapy.” However, “A statement that modifications of the prior art to meet the claimed invention would have been ‘well within the ordinary skill of the art at the time the claimed invention was made’ because the references relied upon teach that all aspects of the claimed invention (something that is not admitted in this case) were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references.” Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat.

App. & Inter. 1993). Applicants respectfully submit that "nasal therapy," as set forth in the outstanding Office Action does not provide an adequate motivation to modify the teachings of either Daneshvar or Mitra in the manner proposed. Moreover, in this case, the Office Action fails to cite to any specific teachings within either of the references to support the applied combination.

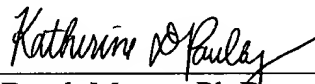
Therefore, it is respectfully submitted that the outstanding Office Action has based the rejection upon hindsight reconstruction of references from non-analogous fields of art, and has provided no reasonable support for the applied combination of Daneshvar and Mitra.

Accordingly, in light of the deficiencies of the outstanding Office Action, it is respectfully submitted that the Office Action fail to provide a *prima facie* of obviousness with regard to the features of Claims 1, 6, 8, 9, and 11-15. It is therefore respectfully requested that this rejection be withdrawn.

Consequently, in view of the foregoing discussion and present amendments, it is respectfully submitted that this application is in condition for allowance. An early and favorable action is therefore respectfully requested.

Respectfully submitted,

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